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Review of PSD2 aspects in the context of the SCT Inst Scheme

I. Factual background:

Reference is made to the SCT Inst Rulebook (EPC004-16) which was published on 30 November 2016. It will become effective on 21 November 2017. In November 2015 the LSG had finalised a review of the regulatory questions arising under the EU regulatory framework that could be considered against the background of the key features of the planned SCT Inst Scheme that were envisaged at the time (please refer to LSG017-15). In light of the fact that the final SCT Inst Rulebook has been published for implementation in November 2017 and of recent developments it appears appropriate to update the review on the impact from PSD2 on the operation of the SCT Inst Rulebook.

II. Review of implications under PSD2¹

Would instant payments as envisaged under the new SCT Inst Scheme raise any issues under the revised PSD (also referred to as "PSD2")? The question may arise in particular in the context of aspects such as 'execution time', 'business day', consumer rights, value-date and liability allocations as addressed under the revised PSD.

a. Execution times:

According to **Article 83 PSD2**, the Originator Bank (payer's PSP) has to ensure that the amount of the relevant payment transaction is credited to the account of the Beneficiary Bank (payee's PSP) by the end of the following "business day".

Definition of "business day":

The definition of 'business day' - to be found in Article 4 (37) PSD2 - means "a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the exe-

¹ For practical reasons and in light of the time frame for PSD2 entering into force on 13 January 2018 this memorandum shall focus on the rules under PSD2 and not elaborate on the situation under PSD1 which would in the most optimistic scenario only apply for a matter of weeks.



cutation of a payment transaction is open for business as required for the execution of a payment transaction;” (emphasis added)

In light of this definition the question arises if it could be argued that PSPs which participate in the SCT Inst Scheme and who would consequently commit to a “24/7/365 end-to-end availability” should be considered as “open for business” on 365 days in a given year for the execution of SCT Inst transactions?

In view of already existing practices (in the context of PSPs debiting PSUs during week-ends and in light of already existing similar schemes outside the euro area but within the geographic scope of the applicable PSD) it appears that it should be possible to foresee specific arrangements enabling PSPs that are participating in the SCT Inst Scheme to be “open” specifically for SCT Inst services.

The above would mean that the Originator Bank should ensure that the SCT Inst payment – if the payment order was received by the Originator Bank on a Saturday - should be credited to the account of the Beneficiary Bank by the end of Sunday (at the latest).

Furthermore, Article 86 of PSD2 specifies that “For national payment transactions, Member States may provide for shorter maximum execution times than those provided for in this Section.” This opt-out clause appears unlikely to cause any issues for SCT Inst, in particular given that SCT Inst should provide for a shorter execution time as compared to the SCT Scheme.

b. Value-dating implications:

In light of the envisaged “24/7/365 end-to-end availability” the question also arises how the rules concerning ‘value-dating’ under PSD2 would impact on the operation of SCT Inst.

The following question needs to be looked at: When would instant payments made say, on a Saturday or on the first day of a long weekend, need to be credited on the Beneficiary’s account?

It appears that Article 87 (1) PSD2 would be relevant in this context. According to Article 87 (1) PSD2, the credit value date for the payee’s (the Beneficiary’s) payment account is no later than the business day on which the amount of the payment transaction is credited to the payee’s payment service provider’s account.

In those circumstances where ‘instant settlement’ would become available to scheme participants it appears that in light of Article 87 (1) PSD2 an SCT Inst transaction - settled through an instant settlement system - would have to be credited to the Beneficiary account with a same day value-date.

This would mean that a payment transaction that is settled through an instant settlement system and therefore credited to the account of the Beneficiary Bank – say on a Saturday - should also be credited to the ac-



count of the Beneficiary with a same day value-date (i.e. same Saturday).

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